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May 6, 2010

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2010-2 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, June 7, 2010**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2010-2

May 6, 2010

### 200.0000 BASE YEAR VALUE TRANSFER – PRINCIPAL RESIDENCE

**200.0029 Equal or Lesser Value.** For purposes of the value comparison test, Revenue and Taxation Code section 69.5(g)(5)(A) provides that if a replacement property is purchased in the first year following the sale of the original property, the full cash value of the replacement property cannot exceed 105 percent of the full cash value of the original property. If a deed for the purchase of a replacement dwelling is recorded any time after a deed evidencing the sale of the original property is recorded, even if both are recorded on the same day, the purchase of the replacement dwelling is presumed to have occurred after the sale of the original property. Thus, if the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day and the deed for the sale of the original property is recorded first, then the purchase of the replacement dwelling occurs after the sale of the original property and the full cash value of the replacement dwelling must meet the 105 percent or less value standard. C 12/29/2009.

**200.0118 Replacement Property.** ~~In order to satisfy the requirement of Revenue and Taxation Code section 69.5(g)(5)(B) that the replacement dwelling be "purchased ... within the first year following the date of the sale of the original property", the following three events must occur at least one day after the recordation of the deed to the original property:~~

- ~~1. Recordation of the deed to the replacement property;~~
- ~~2. Satisfaction of all escrow instructions relating to the replacement property; and~~
- ~~3. The replacement property sales contract becomes specifically enforceable.—C 9/1/87; C 8/19/87.~~

*Delete – Superseded by new opinion. See proposed annotation 200.0029 (C 12/29/2009).*

### 200.0500 BASE YEAR VALUE TRANSFER—CONTAMINATED PROPERTY

**200.0525 Equal or Lesser Value.** For purposes of the equal or lesser value comparison test, Revenue and Taxation Code section 69.4(e)(2)(A) provides that the full cash value of the replacement property cannot exceed 105 percent of the full cash value of the contaminated property if the replacement property is purchased or newly constructed within the first year following the date of sale or transfer of the contaminated property. If a deed for the purchase of a replacement dwelling is recorded any time after a deed evidencing the sale of the original property is recorded, even if both are recorded on the same day, the purchase of the replacement dwelling is presumed to have occurred after the sale of the original property. Thus, if the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day and the deed for the sale of the original property is recorded first, then the purchase of the replacement dwelling occurs after the sale of the original property and the full cash value of the replacement dwelling must meet the 105 percent or less value standard. C 12/29/2009.

**220.0000 CHANGE IN OWNERSHIP**

220.0072 Corporate Ownership. ~~Property is leased to the corporation on a 55-year lease with more than 35 years remaining. All outstanding stock of the corporation is owned by the buyer. The corporation operates a business on the property, but should the buyer and/or corporation discontinue its present business operation the corporation would be liquidated and its assets would later be distributed to the buyer.~~

- ~~1. If the corporation purchases the property, the merger of its lease and the underlying fee would constitute a change in ownership at the time of purchase. Revenue and Taxation Code section 61(c) provides that the termination of a leasehold interest in taxable real property which has an original term of 35 years or more will be regarded as a change in ownership and therefore require reappraisal.~~
- ~~2. If the corporation purchases the property and upon subsequent liquidation distributes said property to buyer, a change of ownership would occur at that time. Revenue and Taxation Code section 61(i) provides that there is a change in ownership when a corporation transfers any interest in real property to one of its shareholders.~~
- ~~3. If buyer purchases the property from seller, no change of ownership would occur at the time of purchase. The corporation and its stockholders are separate entities under section 61(i). Accordingly, the stockholders purchasing the underlying fee which is subject to a lease for a term of 35 years or more would not be regarded as a change in ownership.~~
- ~~4. If buyer purchases the property from seller and the corporation is liquidated and its assets (including the remaining term of the fifty-five year lease) are distributed to buyer, a change of ownership would occur upon such liquidation (i.e., by merger or lease and underlying fee). See Revenue and Taxation Code section 61(c). C 2/22/80.~~

*Delete - The mere extension of a leasehold term to over 35 years, which was originally or at once already over 35 years, and for which a reassessment already occurred upon the lease's original creation or original extension to over 35 years, is not the "creation" of a lease and should not result in another reassessment.*

220.0326.005 Leases. When a lessee acquires the underlying fee interest from the lessor while the remaining lease term is 35 years or longer, the applicable change in ownership rule is Property Tax Rule 462.100(b)(2)(A), which provides that the transfer of a lessor's interest subject to a lease with a remaining term of 35 years or longer, "whether to the lessee or another party," does not constitute a change in ownership of the leased property. When the lessee acquires the underlying fee interest from the lessor while the remaining lease term is shorter than 35 years, the applicable change in ownership rule is Rule 462.100(a)(2)(A), which provides that the transfer of a lessor's interest subject to a lease with a remaining term shorter than 35 years constitutes a change in ownership of the leased property. All other transactions that result in a termination of a lease, whether upon the natural expiration of the lease term, or prior to the expiration of the lease term, and where the leased property reverts to the lessor, are to be governed by the "termination" provisions of Rule 462.100(a)(1)(C) and (b)(1)(C). C 12/21/2009.

220.0452.005 Original Co-owner Transfers. To the extent that ownership interests in a transferred entity are original co-owner interests, if they are transferred in a transaction that is excluded from change in ownership under Property Tax Rule 462.180(d)(4), they remain original co-owner interests after being transferred because they are not counted and cumulated under Rule 462.180(d)(2). The transferee entity itself becomes an original co-owner with respect to the interests it holds in the transferred entity, along with

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the other holders of the remaining interests in the transferred entity. Counting and cumulating of interests in the transferred entity continues so that whatever interests were considered counted and cumulated before the transfer are considered still counted and cumulated after the transfer. For purposes of determining change in ownership of real property of the transferred entity under Revenue and Taxation Code section 64(d), whenever original co-owner interests of the transferee entity are counted and cumulated, a proportionate number of interests in the transferred entity represented by the counted and cumulated shares of the transferee entity must be counted and cumulated as well. C 12/3/2009.

**220.0492 Partnership.** The conversion of a general partnership to a limited partnership and the conversion of the various partners' interests from general to limited or vice versa do not result in changes in ownership so long as each partner has the same interest in the resulting partnership's capital and profits as existed prior to the conversion(s). C 6/23/89; C 9/11/97.

*Delete – Superseded by Property Tax Rule 462.180(d)(4), added December 9, 1998, which provides that Revenue and Taxation Code section 62(a)(2) does not apply to certain statutory conversions.*

**220.0503 Partnership.** The transfer of real property from a general partnership to a limited partnership composed of the same partners, each of whom receives the same proportionate ownership interest in the limited partnership as was held in the general partnership, is excluded from change in ownership per Revenue and Taxation Code section 62(a)(2).

A transfer of real property to a legal entity, such as a limited partnership, which is excluded under section 62(a)(2) becomes subject to the provisions of Revenue and Taxation Code section 64(d), i.e., the limited partners are "original co-owners" and subsequent transfers by them are accumulated so that when cumulatively more than 50 percent of the total interests are transferred by any of the "original co-owners" in one or more transactions, a change in ownership of all real property owned by the limited partnership that was previously excluded from change in ownership will be reappraised. C 11/16/88.

*Delete – Superseded by Property Tax Rule 462.180(d)(4), added December 9, 1998, which provides that Revenue and Taxation Code section 62(a)(2) does not apply to certain statutory conversions.*

**220.0509 Partnership.** When a general partnership converts to a limited partnership, a change in ownership of the general partnership property occurs, but the transfer may be excluded from change in ownership pursuant to Revenue and Taxation Code section 62(a)(2). If the ownership interests in the property are the same before and after the transfer, such that section 62(a)(2) applies, nevertheless, the partners become "original co-owners;" and when subsequent transfers of cumulatively more than 50 percent of the total partnership interests take place, a change in ownership will result as provided by Revenue and Taxation Code section 64(d). C 8/15/97.

*Delete – Superseded by Property Tax Rule 462.180(d)(4), added December 9, 1998, which provides that Revenue and Taxation Code section 62(a)(2) does not apply to certain statutory conversions.*

**220.0538 Partnership Transfer/Conversion.** A, B, and C, the general partners in a general partnership, admit newly formed Corporation as a general partner by each contributing 1 percent of his partnership interest to Corporation in exchange for proportionate ownership interests in Corporation. As a result, Corporation acquires a 1 percent interest in the partnership, and there is no change in ownership (Revenue and Taxation Code section 64(a)). Thereafter, the partnership converts to a limited partnership and assigns its long-

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~~term leasehold interest to the limited partnership. The exclusion from change in ownership pursuant to Revenue and Taxation Code section 62(a)(2) is available, provided that the general partners hold the same proportionate interest in the limited partnership after the conversion; but each general partnership will become an "original co-owner" for purposes of determining change in ownership resulting from subsequent transfers of interests in the limited partnership. C 12/6/90.~~

*Delete – Superseded by Property Tax Rule 462.180(d)(4), added December 9, 1998, which provides that Revenue and Taxation Code section 62(a)(2) does not apply to certain statutory conversions.*

**220.0705 Tenant Constructed Improvements.** ~~When a tenant under a land lease of more than 35 years is obligated to construct improvements, title to which vest in the lessor on the termination of the lease, the tenant's interest in the improvements is properly characterized as an estate for years.~~

~~If the tenant's estate for years is transferred to a third party, e.g., via a stock transfer, when less than 35 years remain on the lease, no change in ownership occurs. C 8/29/91.~~

*Delete – Superseded by Auerbach v. Los Angeles County Assessment Appeals Board.*

#### **493.0000 GRANDPARENT-GRANDCHILD TRANSFER**

**493.0010 Adoption.** Mother gave birth to a daughter (granddaughter) in 1970 and passed away soon after the birth. Father remarried in 1972 or 1973. A few years later, while the daughter was still a minor, she was adopted by her aunt, her mother's sister. The adoptive mother (aunt) is still living. Maternal grandmother passed away in 2006. Her trust provided that the granddaughter inherit the grandmother's personal residence. Since the aunt/adoptive mother is the granddaughter's parent and qualifies as a child of the grandmother and is still living, the transfer to the granddaughter is not eligible for the grandparent-grandchild exclusion. C 11/13/2009.

**493.0090 Middle Generation Limitation.** Grandfather had three children, two sons and one daughter; however, one son predeceased him. The predeceased son was survived by his wife, who is grandfather's daughter-in-law (daughter-in-law/mother) and two children (grandchildren). The daughter-in-law/mother had not remarried at the time of grandfather's death in December 2007. The property passed under the laws of intestate succession to the grandfather's surviving son and daughter and the grandchildren. The grandparent-grandchild exclusion from change in ownership is available when all of the parents of the grandchildren who qualify as the "children" of the grandparents have died or no longer qualify as "children." In this situation, the exclusion is not available because all of the persons who qualify as children of the grandfather and parents of the grandchildren are not deceased. Since the daughter-in-law/mother qualifies as a child of the grandfather because she did not remarry after her husband's death and she is not a stepparent to the grandchildren, the transfer to the grandchildren is not eligible for the grandparent-grandchild exclusion. C 11/16/2009.

#### **625.0000 PARENT-CHILD TRANSFER**

**625.0012 Appraisal Unit Allocation.** A mother died and upon her death a number of parcels transferred to her son that make up a family ranch, a portion of which is also zoned as Timberland Production Zone (TPZ). The taxpayer is requesting the assessor to allocate the exclusion first to all 'Prop 13' assets (grazing land, sites and improvements) and second to

TPZ only as to the amount of the available exclusion not needed to avoid reassessment on the 'Prop 13' assets. Revenue and Taxation Code section 63.1(d)(2) provides that within any appraisal unit, the \$1 million limit shall be applied only on a pro rata basis, and shall not be applied to a selected portion or portions of the appraisal unit. In order to allocate the \$1 million dollar exclusion separately to non-TPZ land within a single parcel, the assessor must find that each parcel is a separate appraisal unit and that each portion of a single parcel, consisting of TPZ land and non-TPZ land, also constitutes separate appraisal units. C 10/15/2009.

[625.0235.020](#) **Trusts—Share and Share Alike.** Husband and wife held title to their real property via their revocable trust. Upon the death of the first spouse, two trusts were established (Trust A and Trust B). The real property was transferred to the surviving spouse's revocable trust (Trust A). After the second spouse's death, Trust A became irrevocable. To determine if any transfer has occurred that does not qualify for the parent-child exclusion, it is necessary to compare the value of the real property received by each beneficiary to the value of that beneficiary's share of the trust estate. The value of the total residue should be determined as of the date the trust became irrevocable, not as of the date of distribution. The assets in Trust B would not be considered part of the Trust A estate. Thus, the transfer of assets from Trust B to Trust A after the second spouse's date of death cannot be used to equalize the distribution of Trust A. C 12/16/2009.